Annual Reports 1985

Health Disciplines Board

Denture Therapists Appeal Board

Ministry of Health
Ontario

Ontario

Shop Canadian
Magasinons à la canadienne

Health Disciplines Board
Conseil des disciplines sanitaires

Room SW-1175
Hepburn Block, Queen's Park
Toronto, Ontario
M7A 1R3
416/965-7285

The Honourable Murray J. Elston
Minister of Health

Dear Minister:

We are pleased to submit the Tenth Annual Report of the Health Disciplines Board, for the period ending December 31, 1985.

This Report also includes a statement concerning the Denture Therapists Appeal Board.

Yours very truly,

Members

TABLE OF CONTENTS

	Page
HEALTH DISCIPLINES BOARD	
I. Introduction	1
Board Membership	2
Functions	3
II. Issues and Comments	4
Workers Compensation Board	4
Compensation	5
Patient Records	6
Third Party Assessments	8
Reviews or Hearings	9
Summary Comment	11
III. Statistics	12
DENTURE THERAPISTS APPEAL BOARD	16

ANNUAL REPORT - 1985

I. INTRODUCTION

This is the tenth report of the Health Disciplines Board to the Minister of Health as required by Section 7(1)[b] of the Health Disciplines Act. The report covers the Board's activities in the calendar year 1985.

In June, 1985, Hugh K.N. Mackenzie resigned as Chairman of the Board after serving in that capacity for three years. Mr. Mackenzie was appointed Chairman of the Board in 1982 and during his tenure his astute and compassionate leadership served well both the Board and the public. The Board wishes to acknowledge Mr. Mackenzie's service and to thank him for his leadership.

The Board appreciates the administrative and professional support provided by the Health Boards Secretariat and legal counsel during the year.

BOARD MEMBERSHIP

The Board was established by the Health Disciplines Act, 1974, which was proclaimed on July 14, 1975.

No person may be appointed to the Health Disciplines Board who is employed in the public service of the Province, or who is or has been registered in a health profession.

MEMBERS - 1985

Hugh K. N. Mackenzie, Chairman	Huntsville (resigned, June 20, 1985)
Solette N. Gelberg, Vice-Chairman	Guelph
Grant H. Gilstorf	Mount Forest
Roberta S. McFadden	Toronto
A. J. (Red) Pianosi	Copper Cliff
Ronald Watson	Scarborough
Sheila J. Ward	Toronto

Health Boards Secretariat

Louise Hastings - Registrar
Katie Lyons - Assistant to the Board
Sylvia Ramkissoon - Committee Officer

Legal Counsel

Russell J. Fraser, Q.C.
Ross B. Freeman, Esq.

FUNCTIONS

The Health Disciplines Act is the source of the mandate for the five self-governing major health disciplines: dentistry, medicine, nursing, optometry and pharmacy. The Health Disciplines Board has two separate and distinct functions under the Act:

1. **COMPLAINTS**: The Board reviews decisions of the complaints committees of the colleges covered by the Act when either the complainant or the member complained against is not satisfied with a decision, other than a decision referring the matter to the Discipline Committee.

2. **REGISTRATIONS**: The Board, if requested, hears or reviews proposed decisions of the registration committees of the colleges covered by the Act where the committees propose to refuse to grant registration or to attach terms, conditions or limitations to a registrant.

II. ISSUES AND COMMENTS

WORKERS' COMPENSATION BOARD

From time to time, the Board reviews complaints which focus on refusals by the Workers' Compensation Board (WCB) to provide benefits.

Following a WCB assessment, an individual who is advised that his or her benefits are refused, reduced or cancelled, may complain that the assessment was improperly conducted.

In the majority of cases, the problem seems to be a lack of understanding by the patient of the physician's role and a lack of communication between the patient and the physician. The result is frustration and disappointment for the patient.

Physicians employed by or acting for the WCB have a duty both to that Board and to the patients they are seeing. Part of their duty to patients is to make the nature of their responsibilities very clear.

This Board has little direct knowledge of the WCB but believes the Board has a duty to ensure that patients clearly understand its role.

COMPENSATION:

In providing for a review of the Complaints Committee's decisions by the Health Disciplines Board the Legislature attempted to provide a wholly independent body of lay people, outside the professional Colleges, to review those complaints which a College decided not to refer to the Discipline Committee. The Board was given no power to duplicate the function of the Courts and award damages or other compensation.

Nevertheless, the Board frequently reviews complaints where the central issue is financial compensation. Although this arises more frequently in dental, pharmacy and optometry complaints, it also arises occasionally in medical complaints, but not in nursing matters.

The Board's lack of jurisdiction to make monetary awards is explained in literature sent beforehand to everyone appearing before the Board. However, the Board believes the Colleges could, in explaining the complaints process, make it clearer that the purpose of the process is to investigate allegations of professional misconduct, and that financial awards or the mediation of financial disputes cannot be sought through the complaints process.

PATIENT RECORDS:

Physicians are required by Regulation to retain patients' records for six years after the last entry or until they cease to practice, whichever occurs first. In addition, physicians are required to provide services to a patient either until those services are no longer required or until the patient has arranged for alternative care and, on request, to provide reports to patients within a reasonable time.

The Code of Ethics of the Canadian Medical Association states that an ethical physician will:

> "ensure the availability of medical care to his patients in his absence; will, when he has accepted professional responsibility for an acutely-ill patient, continue to provide his services until they are no longer required, or until he has arranged for the services of another suitable physician; may, in any other situation, withdraw from his responsibility for the care of any patient provided that he gives the patient adequate notice of his intention."

The Board reviewed several complaints in 1985 which

focused on the disposition of patient records after the physicians had moved their practice to another location. In each case, the physician contacted the College of Physicians and Surgeons to seek directions on the disposition of patient records.

The College advised the physicians of the six-year requirement in the Regulation and urged them to contact the patients they had been seeing on a regular basis and inform them of the planned move. The College's suggestions were followed.

The Board is of the view that <u>what</u> a physician is required to do is clearly set down but finds that <u>how</u> these requirements are to be applied is less clear.

The Board finds no fault with the language of the Regulations or the Code of Ethics. However, the Board believes the lack of clear guidelines for physicians to follow in applying these requirements causes unnecessary problems for patients.

The College is on record as having agreed to review the directions given its members. The Board looks forward to the results of this review.

THIRD PARTY ASSESSMENTS:

Physicians are often retained by third-parties, such as insurance companies, to provide assessments of a patient's condition.

The Board accepts that in such a situation a physician's responsibility may be to the company which has retained him. However, the Board is of the view that the physician must also take responsibility for ensuring the patient is completely aware of the terms and conditions of the assessment. Patients must clearly understand the purpose of the assessment and give their full consent, in writing, if the information obtained during the assessment is to be reported to the requestor.

The Board notes that problems arise when patients lack a clear understanding of why the assessment took place.

The Board considers the question of physicians' responsibilities in a third-party consultation to be an important one. Patients' rights to confidentiality must be protected. However, patients must understand and consent to the release of information to the requestor of the information.

The problems seen by the Board stem from misunderstandings of the purpose of the assessment. The Board sees that there is a dual duty here -- the duty of the patient to enquire and to listen and the duty of the physician to explain.

REVIEWS OR HEARINGS?

The Health Disciplines Board conducts hearings and reviews. What is the difference and why has the Board been given two separate and distinct procedures to administer?

A hearing is a more formal proceeding and while not entirely like a court proceeding, has many of the trappings of it, such as the calling or subpoenaing of witnesses, sworn testimony under oath, cross-examination, and legal argument at the conclusion. A review does not involve the foregoing types of procedures, and therefore is much less formal, usually involving a review of some other body's decision based on the documents before that body, and in the case of a complaint review, after an opportunity is given for the complainant to state the complaint, and the member complained against to state any answer.

The Board is empowered to conduct only a review in the case of decisions of Complaints Committees, and in the case of registration matters, the Board deals with those either by way of review or hearing, with the proposed registrant having the option of choosing which of a review or hearing he wishes to use.

The Legislature's Standing Committee on Procedural Affairs reviewed the Board in February, 1985. One of its recommendations was that on Complaints Committee matters, the person requesting the Board's intervention be given a choice of either a review or hearing, in the same way that that choice is afforded in registration matters. The Board is of the view that this could complicate and prolong the complaints process, and would not benefit either the complainant or the member complained against, since the Board's power to do other than either send the matter to the Discipline Committee or not send it to the Discipline Committee is limited. In no event, does the Board decide whether someone is or is not guilty of professional misconduct.

SUMMARY COMMENT:

The Board dealt with 157 complaints and 13 registration matters in 1985.

In past annual reports the Board has commented on the issue of communication between patient and practitioner. This somewhat complex issue still pervades a significant number of complaints which come before the Board.

Communication between practitioner and patient is, at least, a two-way street -- not only is there a duty on the part of the practitioner to tell the patient what is proposed and, if applicable, the cost, but as well there is a duty on the part of the patient to enquire, to listen and to ensure he understands and, if necessary, to question what is said.

It would be unfair to leave the impression that the duty to communicate rests only with the practitioner. Patients must be willing to question and above all to listen.

III. STATISTICS (Tables I - VII)

In 1985, the Board met on 98 days, and conducted 157 complaint reviews, 12 registration reviews and six registration hearings. The Board issued a total of 174 decisions. The number of cases outstanding at December 31, 1985 was 71.

Table I

HEALTH DISCIPLINES BOARD

Disposition of Complaint Reviews
(for which decisions were issued in 1985)

College	Confirm	Returned for Further Investigation	Refer to Discipline	Admonish	Recommendation	Total
CPSO	85	4	2	4	1	96
RCDS	22	2	-	3	-	27
CNO	29	1	-	1	-	31
OCP	0	1	-	-	-	1
COO	4	-	-	-	-	4
Total	140	8	2	8	1	159

Table II

Disposition of Registration Reviews and Hearings
(for which decisions were issued in 1985)

College	Confirm	Further Consideration	Requirement	Total
CPSO	-	2	-	2
RCDS	-	-	-	-
CNO	4	1	6*	11
OCP	-	2	-	2
COO	-	-	-	-
	4	5	6	15

Table III

Total Complaint and Registration Cases Reviewed/Heard

College	Complaints	Registration	Total
CPSO	97	1	98
RCDS	26	-	26
CNO	29	10	39
OCP	1	2	3
COO	4	-	4
	157	13	170

DENTURE THERAPISTS APPEAL BOARD

The Denture Therapists Appeal Board was established by the Denture Therapists Act, 1974, which was proclaimed on July 14, 1975.

The membership of the Denture Therapists Appeal Board is identical to that of the Health Disciplines Board.

The Board conducted one registration review during 1985; it confirmed the decision of the Registration Committee of the Governing Board of Denture Therapists.

No requests for complaint reviews were received during 1985.

No appeals were outstanding at December 31, 1985.